U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Public Copy

File: EAC-98-075-53938 Office: Vermont Service Center Date: JAN 10 2000

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a [redacted] It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), in order to employ him as a Pundit, or Hindu priest. The director denied the petition determining that the beneficiary's claimed voluntary service at the temple did not satisfy the statutory requirement that the beneficiary have been continuously carrying on the vocation of a Pundit for at least the two years immediately preceding the filing of the petition.

On appeal, counsel for the petitioner argued that the decision was arbitrary, capricious, and an abuse of discretion based on an erroneous interpretation of the Act. Counsel argued, in pertinent part, that the regulation at 8 C.F.R. 204.5(m)(3)(ii)(A) requires two years of prior experience, not two years of prior employment, and that the beneficiary's voluntary experience satisfies the requirement.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
>
> (ii) seeks to enter the United States--
>
> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
> >
> > (II) before October 1, 2000, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
> >
> > (III) before October 1, 2000, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner is a [redacted] The petitioner submitted a letter from the Internal Revenue Service (IRS) dated October 26, 1993, reflecting that the organization was granted recognition as a tax exempt religious organization under section 501(c)(3) of the Internal Revenue Code. The beneficiary is described as a forty-year-old male native and citizen of Trinidad who last entered the United States on April 15, 1995, as a B-2 visitor. The record therefore indicates that the beneficiary has remained in the United States beyond his authorized stay in an unlawful status. The petitioner failed to respond to the question of the petition form requiring the disclosure of any unauthorized employment in the United States.

It must first be noted that the petitioner did not provide all required information on the petition form. Absent all required information, the petition cannot be properly adjudicated. The petition may be denied as incomplete solely on this basis. See 8 C.F.R. 103.2(a)(1). Nevertheless, the appeal will be reviewed on its merits.

In order to establish eligibility for classification as a special immigrant minister, the petitioner must satisfy several eligibility requirements. The statute provides for special immigrant classifications of three distinct types of religious workers: ministers, professional workers, and non-professional workers. Each has different eligibility requirements. For all three categories, the statute requires that the alien must have been continuously carrying on the vocation or occupation for which classification is sought for at least the two years prior to filing. See Section 101(a)(27)(C)(iii) of the Act.

At issue in the director's decision is whether the petitioner has established that the beneficiary had been continuously carrying on the vocation of a Pundit for at least the two years prior to filing.

8 C.F.R. 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional

religious work, or other religious work.

(B) That, if the alien is a minister, he or she has authorization to conduct religious worship and to perform other duties usually performed by authorized members of the clergy, including a detailed description of such authorized duties. In appropriate cases, the certificate of ordination or authorization may be requested.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on January 13, 1998. Therefore, the petitioner must establish that the beneficiary had been continuously carrying on the vocation of a Pundit for at least the two years from January 13, 1996 to January 13, 1998.

In the job-offer letter, an official of the petitioning temple testified that the beneficiary received a certificate in "Hindu religious instruction" from the [redacted] on April 27, 1990, which entitles him to perform the duties of a Pundit. The official further testified that the beneficiary has served the temple voluntarily as a Pundit since November 1995. An official further testified that the beneficiary received no remuneration from the temple, but has been financially supported by a cousin who resides in the United States.

The director found that the claim that the beneficiary performed the duties of a clergy person for the two-year period without remuneration did not satisfy the two-year prior experience requirement. Counsel argued on appeal that the director's interpretation of the statute is erroneous. Counsel asserted on appeal that the director failed to cite any statutory or regulatory language requiring that the prior experience of a special immigrant minister have been paid employment, and further noted that the statute is silent on the question of past experience in a voluntary capacity. Counsel argued that "experience" performing the duties is all that is required by the statute and that there is no basis for the Service to require "paid experience" performing the duties.

In order to be eligible for special immigrant classification as a minister, the statute requires that the alien have been continuously carrying on the vocation for the two years prior to filing and that he or she seeks admission solely for the purpose of carrying on the vocation of a minister of that religious denomination. See Section 101(a)(27)(C) of the Act. In Matter of

Faith Assembly Church, 19 I&N Dec. 391 (Comm. 1986), it was further held that the alien must have been engaged solely as a minister of the religious denomination for the two-year period.

For a non-ministerial position, the regulatory definition of a qualifying job offer at 8 C.F.R. 204.5(m)(4) explicitly requires that the position be remunerated and requires a disclosure of the terms of remuneration. Since the statute requires two years of experience in the position for which classification is sought, the Service interprets that provision to require that the two years of prior experience in a professional or non-professional capacity must have been salaried employment.

In the case of a ministerial position, the same regulation does not require disclosure of the terms of remuneration. The regulation instead requires a showing that the beneficiary will be solely carrying on the vocation of a minister. This is in recognition of the tradition in many religious denominations that clergy persons are not employed, *per se*, having taken vows of poverty. Such persons are, however, financially supported and materially sustained by the denomination or particular institution they serve. The Service therefore requires that the two years of prior experience in a ministerial capacity have been directly supported by the denomination. This can be in the form of direct remuneration or in the form of indirect support and sustenance.

The petitioner in this case seeks classification of the beneficiary in order to employ him as a Pundit at a salary of $400 per week, or $20,800 per year. The statute requires that the prior experience be in the capacity for which special immigrant classification is sought. The claim that the beneficiary performed the duties of a Pundit for the requisite two-year period, but without compensation from the organization in any form, and was instead supported by a relative, is not equivalent to experience in the proffered full-time salaried position. Therefore, the petitioner has not established that the beneficiary was continuously carrying on a religious vocation or occupation for a religious organization as required by the statute.

The record in this matter contains no proof of the beneficiary's means of financial support in the United States, other than a letter purportedly from a relative of the beneficiary stating that he has supported the beneficiary. A single unsubstantiated letter from a third party is not sufficient to sustain the petitioner's burden of proof in this matter. Absent a comprehensive description of the beneficiary's employment history, means of financial support, and other activities in the United States, supported by corroborative documentation, it cannot be concluded that the petitioner has established that the beneficiary was solely carrying on a religious vocation for the two-year period within the meaning of section 101(a)(27)(C) of the Act.

The statute and Matter of Faith Assembly Church, supra, further hold that the prior experience have been for the petitioning denomination. In this case, the voluntary performance of services for a religious organization, while privately supported by oneself or other individuals, does not constitute carrying on the vocation for the denomination. For example, an alien seeking admission in order to be self-employed as a minister of religion, or to serve as a free-lance minister, would be ineligible for special immigrant classification. Therefore, the voluntary performance of religious functions at a religious institution, while financially supported by some means other than the religious institution, does not constitute work experience in a religious vocation or occupation.

For these reasons, the director's objection has not been overcome. Voluntary service in a ministerial capacity does not satisfy the prior experience requirement for a religious vocation within the meaning of section 101(a)(27)(C) of the Act.

Administrative notice is made that a petitioner must also submit its federal tax returns, audited financial statements, or annual reports to establish its ability to pay the proffered wage. See 8 C.F.R. 204.5(g)(2). The petitioner has not satisfied this documentary requirement.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.